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OCA 86-2518
25 July 1986

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MEMORANDUM FOR: Director, Office of Personnel

FROM:

[redacted]
Legislation Division
Office of Congressional Affairs

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SUBJECT: House Post Office and Civil Service Committee Amendment
to DoD Military Intelligence Provision of Intelligence
Authorization Act

1. We would appreciate your comments on a recent amendment to the House version of the Intelligence Authorization bill. The situation is as follows:

2. You will recall that in the process of preparing the draft Intelligence Authorization bill for Fiscal Year 1987 to be sent to the Congress, the Department of Defense (DoD) submitted a proposal to expand certain authorities of the Secretary of Defense with respect to military intelligence personnel. The Agency had no objection to the provision as drafted and submitted.

3. During the Office of Management and Budget (OMB) coordination process on the draft bill, the Office of Personnel Management (OPM) objected to the provision on the grounds that it needed further Executive Branch coordination and review before submission to the Congress. Accordingly, OMB caused the item to be struck from the draft bill as ultimately sent to the Congress.

4. The House Permanent Select Committee on Intelligence (HPSCI), on its own initiative, included the provision as Section 504 of H.R. 4759, the HPSCI version of the Intelligence Authorization Act for Fiscal Year 1987. H.R. 2479 was subsequently reported out by HPSCI, H.Rept. No. 99-690, Part 1 (copy of provision and pertinent section of report attached).

5. On July 23, 1986, the House Post Office and Civil Service Committee took up H.R. 2479 on referral, "marked up" the bill and ordered it reported out. The actual report is expected to be available in early August.

6. At its markup, the Committee adopted an amendment to H.R. 4759 at the request of Representative Mary Rose Oakar (D-OH), Chairman of the Committee's Subcommittee on Compensation and Employee Benefits. The amendment would add a new section to the bill, Section 507, entitled "Report on Intelligence Personnel Systems" (attached). The new section would require the Secretary of Defense and the Director of Central Intelligence to prepare and submit jointly to the intelligence and "civil service" committees, no later than April 15, 1987, a one-time, unclassified report on intelligence personnel systems.

7. It appears adoption of this amendment was the "price" extracted by the Post Office and Civil Service Committee for its agreement to the DoD provision. This office was aware that the Committee was not favorably disposed to the provision. The area for compromise between the Department and the Committee on the provision was understood, however, to be the extent to which the Committee would agree to extend the Secretary's authorities in this area. We were not aware, until after the "markup", that the area of compromise had shifted, apparently in discussions between the Committee and HPSCI, to the Oakar amendment,.

8. We would appreciate your comments on the amendment to determine what, if any, legislative action should be taken in response to it.

STAT

Attachment
as stated

Distribution:

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- OCA/Leg [redacted] (25 July 1986)

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OAKAR AMENDMENT ON INTELLIGENCE PERSONNEL SYSTEMS

Report on Intelligence Personnel
Systems.

SEC. 507. Not later than April 15, 1987, the Secretary of Defense and the Director of Central Intelligence shall submit jointly, an unclassified report to the Committee on Post Office and Civil Service and the Permanent Select Committee on Intelligence of the House of Representatives and to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate describing the civil personnel systems for officers and employees of the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency, and the personnel systems established under section 1590 of Title 10, United States Code, as added by section 504, for civil intelligence officers and employees of the military departments. The report shall include descriptions of---

(1) how each such intelligence personnel system differs from the competitive service and from each other such system;

(2) the specific features of each such personnel system to ensure compliance with the merit system principles set forth in section 2301 of title 5, United States Code;

(3) any features of compensation (including bonuses and awards) unique to such personnel system;

(4) actions (including the number of such actions) taken through employment termination provisions which do not permit appeals outside the agency; and

(5) any recruitment or retention problems existing within such system.

99TH CONGRESS
2D SESSION

H. R. 4759

To authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1986

Mr. HAMILTON introduced the following bill; which was referred to the
Permanent Select Committee on Intelligence

A BILL

To authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That this Act may be cited as the "Intelligence Authoriza-*
4 *tion Act for Fiscal Year 1987".*

1 **MANAGEMENT OF CIVILIAN INTELLIGENCE PERSONNEL OF**
2 **THE MILITARY DEPARTMENTS**

3 **SEC. 504. (a) Chapter 81 of title 10, United States**
4 **Code, is amended by adding at the end thereof the following**
5 **new section:**

6 **"§ 1590. Management of civilian intelligence personnel of**
7 **the military departments**

8 **"(a) The Secretary of Defense may, without regard to**
9 **the provisions of any other law relating to the number, classi-**
10 **fication, or compensation of employees—**

11 **"(1) establish such positions for civilian intelli-**
12 **gence officers and employees of the military depart-**
13 **ments as may be necessary to carry out the intelli-**
14 **gence functions of such departments;**

15 **"(2) appoint individuals to such positions; and**

16 **"(3) fix the compensation of such individuals for**
17 **service in such positions.**

18 **"(b) The Secretary of Defense shall, subject to subsec-**
19 **tion (c), fix the rates of basic pay for positions established**
20 **under subsection (a) in relation to the rates of basic pay pro-**
21 **vided in the General Schedule under section 5332 of title 5**
22 **for positions subject to such Schedule which have correspond-**
23 **ing levels of duties and responsibilities. Except in the case of**
24 **a civilian intelligence officer or employee of a military depart-**
25 **ment serving as a member of the Senior Executive Service of**

1 a military department, no civilian intelligence officer or em-
2 ployee of a military department may be paid basic compensa-
3 tion at a rate in excess of the highest rate of basic pay con-
4 tained in such General Schedule.

5 “(c) The Secretary of Defense is authorized, consistent
6 with section 5341 of title 5, to adopt such provisions of such
7 title as provide for prevailing rate systems of basic pay and to
8 apply such provisions to positions for civilian intelligence offi-
9 cers or employees in or under which the military departments
10 may employ individuals described by section 5342(a)(2)(A) of
11 such title.

12 “(d) In addition to the basic compensation payable under
13 subsection (b), civilian intelligence officers and employees of
14 the military departments who are citizens or nationals of the
15 United States and who are stationed outside the continental
16 United States or in Alaska may be paid compensation, in
17 accordance with regulations prescribed by the Secretary of
18 Defense, not in excess of an allowance authorized to be paid
19 by section 5941(a) of title 5 for employees whose rates of
20 basic pay are fixed by statute. Such allowances shall be based
21 on—

22 “(1) living costs substantially higher than in the
23 District of Columbia;

24 “(2) conditions of environment which differ sub-
25 stantially from conditions of environment in the conti-

1 mental United States and warrant an allowance as a
2 recruitment incentive; or

3 "(3) both of the factors described in paragraphs
4 (1) and (2).

5 "(e)(1) Notwithstanding any other provision of law, the
6 Secretary of Defense may, during fiscal year 1987, terminate
7 the employment of any civilian intelligence officer or employ-
8 ee of a military department whenever he considers that
9 action to be in the interests of the United States and he de-
10 termines that the procedures prescribed in other provisions of
11 law that authorize the termination of the employment of such
12 officer or employee cannot be invoked in a manner consistent
13 with the national security. The decisions of the Secretary
14 under this paragraph are final and may not be appealed or
15 reviewed outside the Department of Defense. The Secretary
16 of Defense shall promptly notify the Permanent Select Com-
17 mittee on Intelligence of the House of Representatives and
18 the Select Committee on Intelligence of the Senate whenever
19 this termination authority is exercised.

20 "(2) Any termination of employment under this subsec-
21 tion shall not affect the right of the officer or employee in-
22 volved to seek or accept employment with any other depart-
23 ment or agency of the United States if he is declared eligible
24 for such employment by the Director of the Office of Person-
25 nel Management.

99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT 99-690
Part 1

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

JULY 17, 1986 —Ordered to be printed

Mr. HAMILTON, from the Permanent Select Committee on
Intelligence, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4759]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for the intelligence and intelligence-related activities of the U.S. Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass with an amendment.

PURPOSE

The bill would:

- (1) Authorize appropriations for fiscal year 1987 for (a) the intelligence and intelligence-related activities of the U.S. Government, (b) the Intelligence Community Staff and (c) the Central Intelligence Agency Retirement and Disability System;
- (2) Authorize the personnel ceilings on September 30, 1987, for the intelligence and intelligence-related activities of the U.S. Government;
- (3) Permit the Director of Central Intelligence to authorize personnel ceilings in fiscal year 1987 for any intelligence elements up to 2 percent above the authorized levels;
- (4) Provide restrictions on support for military or paramilitary operations in Nicaragua and Angola;

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Director of Central Intelligence awards authorized by Section 4503 of Title 5 or pursuant to Section 402 of that Act may be paid and accepted without regard to Section 5536 of title 5, which prohibits additional compensation for the performance of duties by federal civilian and military personnel without specific legislative and appropriations act authorizations.

The Committee is aware of the general policy that military personnel are not eligible to receive monetary awards for extraordinary performance. After carefully considering this policy in light of national intelligence needs, the Committee concluded that the purpose of the Director of Central Intelligence awards, i.e., creation of a special incentive for extraordinary performance by intelligence personnel in meeting national intelligence needs by establishing a small number of substantial cash awards for extraordinary intelligence service, justifies permitting a member of the armed forces to be eligible to receive a cash award in addition to normal pay and allowances on the same basis as his civilian counterparts doing identical work. The Committee notes that the small number of awards authorized by the Director of Central Intelligence prevents the awards program from becoming a substantial outlay drawing on scarce intelligence resources.

The amendment to Section 402 of the FY 1984 Intelligence Authorization Act made by Section 503 of the bill also provides that the Director of Central Intelligence awards authorized by Section 4503 of Title 5 or pursuant to Section 402 of that Act may be paid and accepted without regard to the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to the award, or the assignment of such member to duties other than foreign intelligence duties. Thus the subsequent death or change in status of an employee or member of the the armed forces does not disqualify the employee or member (or the employee's or member's estate) from receiving the award for which he would otherwise have been eligible, a problem which arises due to the lag time between an individual's performance of extraordinary service and the Director's approval of the award for that service, or due to the lag time between the Director's approval of the award and issuance of the funds to the individual representing the award.

Section 504: Management of Civilian Intelligence Personnel of the Military Departments

Section 504 of the bill enacts a new Section 1590 in Title 10 of the United States Code to authorize the Secretary of Defense to provide for management of civilian intelligence personnel of the military departments, notwithstanding certain civil service laws. The provision is based on Section 1604 of Title 10, enacted in 1984, which grants similar authority to the Secretary of Defense with respect to Defense Intelligence Agency civilian personnel. Section 504 brings civilian intelligence personnel in the military departments within the same type of personnel management system as applies to civilians in the rest of the elements of the Intelligence Community. In the aggregate, the provision affects only a very small fraction of the total Army, Navy, and Air Force civilian workforces (es-

authorized by Section 4503 of that Act may be paid and 6 of title 5, which prohibits performance of duties by federal specific legislative and ap

ral policy that military per- etary awards for extraordi- dering this policy in light of ttee concluded that the pur- nce awards, i.e., creation of performance by intelligence nce needs by establishing a ds for extraordinary intelli- mber of the armed forces to addition to normal pay and civilian counterparts doing that the small number of entral Intelligence prevents substantial outlay drawing

ie FY 1984 Intelligence Au- f the bill also provides that ards authorized by Section 402 of that Act may be paid eath, separation, or retire- of the Armed Forces whose assignment of such member ce duties. Thus the subse- employee or member of the ce employee or member (or m receiving the award for eligible, a problem which individual's performance of s approval of the award for ven the Director's approval to the individual represent-

Intelligence Personnel of the ments

Section 1590 in Title 10 of he Secretary of Defense to itelligence personnel of the certain civil service laws. of Title 10, enacted in 1984, ecretary of Defense with re- ilian personnel. Section 504 n the military departments nagement system as applies of the Intelligence Commu- ffects only a very small frac- orce civilian workforces (se-

timated personnel affected Army—2692; Navy—1877; Air Force—1671). Although the affected population is small, it performs vital national and departmental intelligence functions

Granting the Secretary of Defense authority for personnel management of Army, Navy, and Air Force civilian intelligence personnel will improve the quality of intelligence collection and production within the military departments by improving the ability of their intelligence elements to attract and retain skilled civilian intelligence personnel. The military departments have advised the Committee that, due to civil service regulations and policies promulgated by the Office of Personnel Management which do not sufficiently take account of the special needs for management of their civilian intelligence personnel, the military departments often cannot retain intelligence professionals within their specialties or promote them to higher-grade General Schedule positions. The Committee notes that the Office of Personnel Management General Schedule 132 intelligence position classification standards series (GS-132-0), which currently applies to positions for civilian intelligence personnel in the military departments, was issued by the Civil Service Commission (OPM's predecessor) in April 1960.

According to the military departments, to promote an intelligence specialist to a higher-grade position, they often must make the specialist a manager with supervisory responsibility. The military departments find that their inability to keep civilian intelligence specialists within their specialties and offer them the possibility of promotion creates substantial management difficulties and discourages specialists from remaining with the military departments in their specialties. The military departments find this shortcoming particularly damaging with respect to their intelligence analysts and their human intelligence (HUMINT) collection case officers, specialties in which longevity and experience are essential to superior performance.

The military departments have advised the Committee that, under current civilian personnel management constraints, they have difficulty retaining their skilled civilian intelligence personnel in light of opportunities elsewhere in government. The military departments state that they have experienced a significant outflow of their trained civilian personnel to the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency in part because those agencies already enjoy the civilian personnel management flexibility the military departments seek and can therefore offer more attractive career development opportunities. Thus, the military departments spend significant time and fiscal resources to recruit, clear, and train civilian intelligence personnel, only to lose them to other intelligence agencies. The military departments expect to avoid significant recruitment, clearance and training costs as a result of increased civilian personnel retention under the new personnel management systems permitted by Section 504 of the bill.

The Department of the Navy's recent difficulties in recruiting and retaining civilian intelligence personnel illustrates the difficulties the military departments face. The Department of the Navy informed the Committee that, during the past two years, the Naval Intelligence Command has had difficulty recruiting qualified appli-

cants in the electronic engineer, electrical engineer, and computer science fields. In one specific instance, the Naval Intelligence Support Center interviewed 32 people for a computer science position and made offers to 17 candidates without success. Of the 17, five took positions with the National Security Agency and two took positions with the Central Intelligence Agency, for salaries in the \$24,000 to \$26,000 range. The Naval Intelligence Support Center was able to offer a maximum salary of only \$17,824 to those individuals. The Naval Intelligence Support Center also has attempted unsuccessfully for over a year to fill four positions involving analysis of foreign communications antennae and equipment and of missile guidance systems. During the past three years, the Naval Intelligence Command has lost 92 analysts in grades GS-11 through GS-14 to the Defense Intelligence Agency, the Central Intelligence Agency, and the National Security Agency. According to the Navy, most of the individuals involved in this outflow to other intelligence agencies were employees at the GS-11 level (20 individuals) and at the GS-12 level (49 individuals) who left solely because of the greater promotional opportunities at DIA, CIA, and NSA. In one case, a GS-12 Naval Intelligence Support Center analyst left for a GS-14 position at NSA.

As a general matter, inability to retain experienced civilian personnel has an especially detrimental effect in the military departments due to the personnel practice of the armed forces of rotating military personnel into and out of intelligence assignments in the military departments. Because the military personnel rotate so frequently, the military departments must rely upon their civilian intelligence personnel to provide the element of continuity essential to the effective performance of intelligence functions. Accordingly, retention of civilian intelligence personnel takes high priority within the military departments' intelligence programs.

The Committee notes that Section 504 of the bill would permit the Secretary of Defense to create separate Army, Navy, and Air Force civilian intelligence personnel management systems. Alternatively, Section 504 would permit the Secretary, exercising his authority under Section 1590 of Title 10 as enacted by Section 504 in combination with his authority under Section 1605 of Title 10 with respect to DIA civilians and under the National Security Agency Act of 1959 (50 U.S.C. 402 note) with respect to NSA civilians, to consolidate the civilian intelligence personnel management systems of some or all of these DOD intelligence components if he deems it advisable.

Section 504(a) of the bill would amend Title 10 of the United States Code by adding a new section 1590 to authorize the Secretary of Defense to provide for management of civilian intelligence personnel of the military departments.

Subsection 1590(a) of Title 10 as contained in Section 504 of the bill authorizes the Secretary of Defense to establish positions for civilian intelligence personnel of the military departments to carry out the intelligence functions of those departments, to appoint individuals to such positions, and to pay those individuals, notwithstanding laws relating to the number, classification, or compensation of employees. The Secretary of Defense thus may exempt civilian intelligence positions in the military departments, and the per-

electrical engineer, and compensation, the Naval Intelligence Agency for a computer science without success. Of the 17, Security Agency and two Intelligence Agency, for salaries of only \$17,824 to those support Center also has attached all four positions involving personnel and equipment and in the past three years, the Naval Intelligence Agency, the Central Intelligence Agency. According to the in this outflow to other the GS-11 level (20 individuals) who left solely because of duties at DIA, CIA, and NSA Intelligence Support Center analysts

to retain experienced civilian personnel effect in the military departments of the armed forces of rotating intelligence assignments in military personnel rotate as must rely upon their civilian element of continuity intelligence functions. Accordingly, personnel takes high priority intelligence programs. Section 504 of the bill would permit separate Army, Navy, and Air Force personnel management systems. Also, the Secretary, exercising his authority under Section 1605 of Title 10 of the United States Code, the National Security Agency with respect to NSA civilians, to personnel management systems intelligence components if he deems it

to amend Title 10 of the United States Code to authorize the Secretary of Defense to establish positions for civilian military departments to carry out those departments, to appoint and pay those individuals, notwithstanding, classification, or compensation. Defense thus may exempt civilian military departments, and the per-

sonnel occupying such positions, from the civil service laws relating to numbers, classification and compensation of employees.

Subsection 1590(b) requires the Secretary of Defense, in exercising his authority under subsection 1590(a), to fix the rates of basic pay for military department civilian intelligence personnel positions in relation to the civil service General Schedule rates for positions with corresponding levels of duties and responsibilities. Subsection 1590(b) also sets a ceiling, equal to the highest General Schedule basic pay rate, on the basic compensation of non-Senior Executive Service military department civilian intelligence personnel.

Subsection 1590(c) authorizes the Secretary of Defense to employ prevailing rates systems of basic pay, similar to those prescribed in Chapter IV of Chapter 53 of Title 5 of the United States Code, for civilian intelligence personnel meeting the description of "prevailing rate employee" contained in Section 5342(a)(2)(A) of Title 5. Section 5342(a)(2)(A) defines as a prevailing rate employee "an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semi-skilled or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement."

Subsection 1590(d) authorizes payment of allowances based on living costs and conditions of environment to civilian intelligence personnel of the military departments assigned outside the continental United States or assigned in Alaska. Such compensation is in addition to basic compensation and is based upon living costs substantially higher than those in the District of Columbia and/or upon environmental conditions substantially different from those of the lower-48 continental United States if such conditions warrant the additional compensation as a recruitment incentive.

Subsection 1590(e)(1) grants the Secretary of Defense special authority during fiscal year 1987 to terminate a military department civilian intelligence officer or employee whenever he considers it advisable in the interests of the United States and he determines that procedures prescribed in other termination statutes cannot be invoked in a manner consistent with national security. Such decisions by the Secretary are final and not subject to appeal or review outside the Department of Defense. The Secretary of Defense must notify the intelligence committees of the Congress promptly when the special termination authority is exercised. The requirement for notification to the intelligence committees facilitates oversight of the use of the special termination authority and may provide information useful in determining whether to place in permanent law this authority granted for a single fiscal year.

Subsection 1590(e)(2) provides that an officer or employee's termination by the exercise of the special termination authority does not affect his right to seek or accept employment with a federal department or agency (other than that from which he was terminated) if the Director of the Office of Personnel Management declares him eligible for such employment.

Subsection 1590(e)(3) permits the Secretary of Defense to delegate the special termination authority only to the Deputy Secretary of

Defense and/or the Secretaries of the Military Departments for the personnel of their respective departments. If the Secretary of Defense delegates the authority to his Deputy or to the service secretaries, any termination under such delegation is appealable to the Secretary of Defense.

Section 504(b) of the bill makes a conforming amendment to the table of sections of chapter 81 of Title 10 of the United States Code.

Section 505: NSA Acquisition of Critical Skills

Section 505 of the bill amends the National Security Agency Act of 1959 to authorize the Secretary of Defense to send NSA civilian employees to be students at accredited professional, technical and other institutions of higher learning for training at the undergraduate level. The purpose of Section 505 is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to NSA's mission.

Section 505 is designed to increase the capability of NSA to achieve simultaneously two of its important personnel objectives: (1) ensuring equal employment opportunity within NSA through affirmative action and (2) developing and retaining personnel trained in the skills essential to effective performance of NSA's mission.

The NSA mission demands employees of extraordinary aptitude and strong basic undergraduate training in certain disciplines, such as mathematics, computer science, engineering and foreign languages. The institutions of higher learning in the United States currently do not produce a sufficient pool of such graduates to satisfy the personnel requirements of the private sector and of government agencies. Given the short supply of qualified college graduates in these disciplines, NSA has difficulty satisfying its essential needs for such personnel. Within this general requirement for skilled personnel, the Agency has even greater difficulty recruiting sufficient qualified minority graduates to meet the Agency's obligation to ensure equal employment opportunity through affirmative action. The Agency has difficulty competing with other employers, and particularly private sector employers who can offer more favorable compensation arrangements, to attract these graduates.

Section 505 presents a workable solution to the problem the Agency has in attracting sufficient numbers of high aptitude college graduates, particularly minorities, trained in critical basic disciplines. Under Section 505, the Agency can identify high aptitude high school graduates, with special efforts to identify minority high school students, and offer them NSA employment and an undergraduate education funded by NSA.

Section 505 enacts a new Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) to establish the NSA undergraduate training program.

Subsection 16(a) states the purpose of the section, which is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, and particularly minority high school stu-